

ESTTA Tracking number: **ESTTA1072**

Filing date: **06/11/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209914
Party	Plaintiff GEORGETOWN TRADING CO., LLC
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Date	06/11/2013
Attachments	OLD PEPPER BOURBON - Reply to Response to Motion for Default Judgment.pdf(1752066 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Georgetown Trading Co., LLC

Opposer,

vs.

Venturi Spirits, LLC

Applicant.

Opposition No. 91/209,914

Application No.: 85/693,721

Publication Date: 01/02/2013

Mark: OLD PEPPER BOURBON

**OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO  
OPPOSER'S MOTION FOR DEFAULT JUDGMENT**

Opposer Georgetown Trading Co., LLC ("Opposer"), by and through its undersigned counsel, hereby submits this Reply to Applicant Venturi Spirits, LLC's ("Applicant") Response to Opposer's Motion for Default Judgment.

In reply to Count No. 1 of Applicant's Response, Opposer notes Applicant's admission that its Answer to the Notice of Opposition was in fact late. Opposer also notes that Applicant claims its Answer was filed "less than two weeks after its due date". In fact, the deadline for Applicant to timely file its Answer was May 6, 2013. As Applicant's Answer was filed on May 23, 2013, the Answer was actually filed *more than* and not *less than* two weeks after the deadline. Nevertheless, Opposer does not believe that a "miscalendaring" of the deadline amounts to good cause such that the untimely filing should be allowed. As Opposer previously stated in its initial Motion, (1) both Applicant and its counsel missed the deadline, (2) this proceeding is not the first for Applicant's counsel before the Trademark Trial and Appeal Board ("Board"), and (3) forty days is plenty of time to respond. Most importantly, the plethora of

evidence Opposer attached to its Motion for Default Judgment shows that Applicant was very active in the creation of numerous advertising and promotional activities for its OLD PEPPER BOURBON mark during the very time it could have and should have been preparing and submitting its Answer to the Notice of Opposition. For that reason alone, the failure to file a timely Answer is inexcusable.

In reply to Count No. 2 of Applicant's Response, Opposer notes that its Motion for Default Judgment was by no means spurious or baseless as accused. Applicant's Answer was, in fact, not filed by the deadline. Applicant's counsel has, in fact, represented defendants before the Board before this proceeding and is thus experienced in the submission of timely Answers. Applicant did, in fact, create both a Facebook page and a Twitter page to promote its OLD PEPPER BOURBON mark after the Notice of Opposition was instituted and before its Answer was due to be timely filed. Thus, Opposer's Motion was perfectly warranted.

In reply to Count No. 3 of Applicant's Response, Opposer notes that the Board Manual of Procedure ("TBMP") specifically states that when the party in the position of defendant fails to file a timely answer, the issue of default may be raised by means other than the Board's own issuance of a notice of default. *See* TBMP §508. In particular, the party in the position of the plaintiff may file a motion for default judgment. *Id.* Regardless, Fed. R. Civ. P. 55(c) requires that the defendant show good cause why default judgment should not be entered, and Applicant has failed to show such good cause in either its untimely Answer or its Response.

In reply to Count No. 4 of Applicant's Response, Opposer notes that whether or not Default Judgments are inappropriate when filed after pleadings, Applicant's late-filed Answer has not yet been considered a pleading and, thus, Opposer's motion is perfectly timely. Further, and as referenced above, TBMP §508 specifically allows for such a motion to be filed when the

party in the position of the defendant fails to file a timely answer, which is precisely what occurred in this proceeding.

In reply to Count No. 5 of Applicant's Response, Opposer notes that Applicant's third and final case citation is again to an 11<sup>th</sup> Circuit (comprised of Alabama, Florida, and Georgia) court case, this time from 1985. Nevertheless, Opposer notes that whether or not the courts or the Board prefer entries of default judgment, such an entry is warranted in this case when Applicant (1) had plenty of time, notice and experience to file a timely Answer, (2) spent its forty days to Answer creating advertising and promotional websites for the mark that is the very subject of this proceeding, and (3) failed in its untimely Answer and its Response to show good cause for the untimely filing other than to state in its Response that the deadline was "miscalendared." In addition, Opposer does not want the Board to overlook the fact that Opposer made specific economic decisions based on Applicant's failure to file a timely Answer and, therefore, Opposer would indeed be prejudiced if the Answer is allowed. Applicant should not be entitled to benefit from the advertising and promotions it created for its OLD PEPPER BOURBON mark during the very time to answer by having its late Answer allowed. To do so would be to reward Applicant for its irresponsible and self-serving behavior.

In reply to Count No. 6 of Applicant's Response, Opposer merely reiterates its Reply to Count No.4 and refers again to its citation of TBMP §508 and 37 CFR §2.106(a), both of which specifically allow for Opposer's Motion for Default Judgment to be filed at this time.

In reply to Count No. 7 of Applicant's Response, Opposer notes that it is irrelevant whether Applicant has raised issues of fact or law. What matters is that Applicant neither filed a timely Answer nor showed good cause for the lateness thereof, and that Opposer would be substantially prejudiced and the Applicant unjustly rewarded if the Answer is allowed.

WHEREFORE, Opposer prays that its motion be sustained in favor of Opposer and that judgment be entered against Applicant pursuant to Fed. R. Civ. P. 55(b) and 37 CFR §2.106(a).

Respectfully submitted,

Dated: June 11, 2013

By:


  
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## **CERTIFICATE OF SERVICE**

I, Andrew N. Spivak, one of the Attorneys for Petitioner, hereby certify that on this 11<sup>th</sup> day of June, 2013, a true a correct copy of the foregoing OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR DEFAULT JUDGMENT was served via first class mail, postage prepaid upon:

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